

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: CERTIFICATION PROCESS :
OF GAS SERVICE EMPLOYEES : DOCKET NO. 3438

RESPONSE OF USWA LOCAL 12431 TO COMMISSION'S
FIRST SET OF LEGAL ISSUES TO BE DISCUSSED/BRIEFED

Now comes intervenor, USWA Local 12431, and makes this Response to Commission's First Set of Legal Issues to be Discussed/Briefed. In this Response, Local 12431 references the paragraph numbers employed by the Commission in its document.

1. C.A. No. P.C. 02-2329 was dismissed by the parties without prejudice during the pendency of the temporary restraining order. There was no adjudication on the merits of the claims presented by Plaintiff: no hearing was conducted on either application for preliminary or for permanent injunctions. Accordingly, it is submitted, that, subsequent to dismissal, the temporary restraining order entered in said civil action has no precedential effect in the present proceedings. Although that is the case, the rationale adopted by an impartial observer, a superior court judge, should not be ignored in Commission deliberations. Local 12431 presumes that a copy of the Court's Order will be furnished by another party. If that is not the case, kindly advise and undersigned counsel will secure and file a copy.

2. - 3. The issues presented by Paragraphs 2 and 3 abundantly illustrate the complexities arising in the present docket. It is a well recognized rule of statutory construction that two or more statutes dealing with the same subject matter should, whenever possible, be read together to achieve a consistent result. In the event such consistency is impossible, the last-enacted statute

prevails. Thus, in the present case, R.I.G.L., 1956, as amended, § 39-2-23 would prevail over §§ 28-27-28 and 28-27-29 if the statutes are deemed to be inconsistent.

In Rhode Island, there is no legislative history available to assist in determining legislative intent. Thus, the Commission must act on the basis of the statutes themselves.

§§ 28-27-28 and 28-27-29 are hardly models of legislative clarity. For instance, there could be much discussion whether employees who terminate, restore or activate services or who test meters are engaged in “the installation, repair, replacement, servicing, maintenance, and alteration of: (1) Any devices or accessories for what is normally considered heating/cooling equipment....” [EMPHASIS ADDED]. Quaere: whose opinion controls the meaning of “normally considered”?

It is undisputed, nonetheless, that the Department of Labor and Training has used the statutory language for several years as the basis for its jurisdiction over such gas company employees. Thus, there is a strong public policy basis, as well as the applicable general legal principle, which favors consistent interpretation, to give effect to §§ 28-27-28, 28-27-29 and 39-2-23.

Of course, if the United States District Court awards plaintiff the relief sought in C.A. No. 02-316 T, New England Gas Company v. Rhode Island Division of Public Utilities and Carriers, et al, the entire foregoing analysis is rendered moot. Therefore, Local 12431 respectfully submits that it is impossible to provide a clear answer to the questions presented by Paragraphs 2 and 3.

At the Pre-Hearing Conference convened herein on July 9, 2002, Commission counsel emphasized her position that the present docket be resolved by a negotiated rulemaking, as permitted by Commission Rules. The difficulties raised by issues presented under Paragraphs 2

and 3 underline the wisdom of her position. As he did at the pre-hearing conference, undersigned counsel for Local 12431 concurs in and supports Attorney Wilson's position. It is by taking the time necessary to resolve what may well be competing justifiable positions of the various parties by settlement that the Commission can arrive at a workable regulation which accommodates the reasonable expectations of the parties and avoids a great deal of potentially unnecessary administrative and judicial litigation.

4. Since the parties have dismissed C.A. No. P.C. 02-2329, without prejudice, that case has no clear precedential effect on the present proceedings for any purpose.

5. See answer to Paragraph 4, supra.

Respectfully submitted,
USWA Local 12431
By its Attorney,

Dennis J. Roberts II #0560
Law Offices of Dennis J. Roberts II
850 Turks Head Place
Providence, RI 02903
(401) 274-9600
(401) 274-6500 (fax)

CERTIFICATION

I hereby certify that on this
to the following:

day of July, 2002, I forwarded a true copy of the within

Craig Eaton, Esq.
Richard R. Beretta, Esq.
Adler Pollock & Sheehan
2300 Financial Plaza
Providence, RI 02903-2443

Sharon Partridge, Vice President
Southern Union NE Division
100 Weybosset Street
Providence, RI 02903

Paul Roberti, Esq.
Dept. of Attorney General
150 South Main Street
Providence, RI 02903

Leo Wold, Esq.
Dept. of Attorney General
150 South Main Street
Providence, RI 02903

Charles W. Wright, Chief Investigator
Dept. of Labor & Training Div. of Prof. Reg.
1511 Pontiac Ave., Bldg. 70
PO Box 20247
Cranston, RI 02920-0943

Luly E. Massaro, Commission Clerk
Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02889
